

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Demotion of  
Adeel Lari.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER.**

The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on January 16-17 and 21, 2003, at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed on February 5, 2003, upon receipt of the post-hearing briefs.

Cassandra O. O'Hern, Assistant Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101-2128, appeared for the Department of Transportation (Department of Mn/DOT).

Brian E. Cote, Esq., Cote Law Firm, Ltd., 550A Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, appeared for the employee, Adeel Lari.

**NOTICE**

Pursuant to Minn. Stat. § 43A.33, subd. 4, this Order is the final decision in this case. Any party aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.68.

**STATEMENT OF ISSUE**

The issue in this case is whether the Department of Transportation had just cause to demote Adeel Lari from his position as Director of the Office of Research Services.

The Administrative Law Judge concludes that the Department did not have just cause to demote Adeel Lari and that the Department should reinstate him to his position or to an equivalent position within the agency.

Based upon all the files, records, and proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

**Procedural Background**

1. On September 19, 2002, the Department demoted Adeel Lari from his position of Engineer Principal, Administrative, to Principal Engineer, a non-management position, based on the Department's conclusion that Lari had violated the Department's

Code of Ethics policy and sexual harassment policy by being responsible for the security of two laptop computers that were found to have substantial amounts of pornographic or sexually explicit material stored on them. The Department believed that the investigative evidence substantiated the conclusion that it was “more likely than not” that Lari had placed this material on the computers.<sup>[1]</sup>

2. During the investigation and afterward, Lari consistently denied placing the material on the computers and denied any knowledge that the material was there.

3. Lari appealed the demotion by requesting a contested case hearing under Minn. Stat. § 43A.33, subd. 3(a).<sup>[2]</sup>

4. On January 15, 2003, the day before the hearing was to start, Lari and the Department executed a written stipulation of fact agreeing that Lari did not place the pornographic material on either of the two computers.<sup>[3]</sup> The hearing consequently was focused on whether the Department had just cause for demoting Lari despite its recent agreement that he was not responsible for placing the material on the computers.

## **Employment Background**

5. Adeel Lari is a civil engineer who has worked for the Department for 28 years. He began his employment in 1974 as an engineer in training and held progressively more responsible jobs until September 2002. From 1986 to 1994 he was the Divisional Right of Way Engineer, managing right of way activities (meaning the acquisition and maintenance of property needed for public road projects) for the Metro Division. In this capacity he supervised 24 employees and represented the Department in condemnation trials requiring in-depth analysis of property valuation. From 1994 to 2000 he was the Director of the Office of Alternative Transportation Financing (ATF), an office charged with developing innovative financing techniques to fund public infrastructure. As of January 1, 2001, the Office of ATF was merged into the Office of Research Services (ORS), and Lari became the Director of that office. The ORS is responsible for implementing the Department’s research program and managing \$12 million of research contracts on behalf of the Department.

6. In addition to these responsibilities Lari has been active on a variety of committees and task forces within the Department, including the Diversity Committee, the Information Leadership Council, and the Human Resource Council. In approximately 1994 the governor appointed Lari as Chair of the Council of Asian-Pacific Minnesotans, and he served in that capacity until he resigned in the fall of 2002.<sup>[4]</sup>

7. According to Gene Ofstead, the Assistant Commissioner to whom Lari reported as Director of ATF until Ofstead retired in 1998, Lari is a skilled, strategic thinker with a strong work ethic and a well-known reputation for personal integrity and truthfulness. In his 39 years of experience with the Department, he would rank Lari in the top 5% of employees in terms of effort expended on the job.<sup>[5]</sup> Margo LaBau, the Chief of Staff to whom Lari reported as Director of ORS, had no complaints about Lari’s

performance and believed that the office was doing well under his direction.<sup>[6]</sup> According to an ORS program manager who reported to Lari before the demotion, Lari has an exemplary work ethic, is dedicated and committed to the projects under his supervision, and has a reputation for being truthful.<sup>[7]</sup>

8. In his job as Director of ATF, Lari frequently traveled and made dozens of power point presentations requiring the use of a laptop computer.<sup>[8]</sup> When ATF was merged into ORS, he continued to be responsible for some ATF projects in addition to the new responsibilities of ORS. He and his staff required the use of a laptop computer to produce the presentations, and Lari's work specifically required the use of a reliable laptop computer. The Compaq computer he had been using was outdated and had significant reliability problems. The problems with the Compaq prompted Lari to pursue purchase of a replacement computer.<sup>[9]</sup>

9. In June 2001, Lari arranged for the purchase of a replacement laptop, a Sony, through an Information Technology (IT) specialist in ORS named Jim Aamot. The reason for doing it at that time was to use funds that remained in the ATF budget that would otherwise have reverted to the general fund at the end of the month if left unused.<sup>[10]</sup>

10. Over the course of that summer, it became clear that Lari and his staff would be doing far fewer presentations than anticipated. During the summer of 2001 the state faced a possible government shut-down because the legislature lacked agreement on a budget, requiring Lari's office to suspend work on the 200 to 300 research contracts that were in place at that time. The state also faced a possible strike by two government employee unions, which in fact occurred in October 2001. In early 2002, the state froze funds budgeted for out-of-state travel. From that time on ORS had severe budget problems, and several employee positions remained vacant.<sup>[11]</sup>

## **The Investigation**

11. On June 6, 2002, Lari brought the Compaq into the Desktop Support Services (DSS) area of Information Resource Management (IRM) for repair. The Compaq had been repaired multiple times in the past year. This time, the Compaq's power supply was not working. On June 17, 2002, Lari brought the Sony laptop computer in for repair because its operating system would not open.

12. On June 18, 2002, computer technicians working on the Sony determined that some freeware (file-sharing software that can be downloaded free of charge from the Internet) called "Win MX" had caused the problem and that the hard drive would have to be reformatted. When they informed Lari of this, he told them that he had allowed his teenage son to use the Sony to download music from the Internet and that this might have been the source of the problem. He also told the technicians that he had stored a quantity of family photographs on the Sony, and he asked the technicians to try to save any photographs they found on the hard drive.<sup>[12]</sup>

13. Later that day or the next, the technician working on the hard drive found approximately 100 pornographic photographs in several different folders entitled "C:\My Music\Me" or "D:\Morpheus\Morpheus\My Sharefolder."<sup>[13]</sup> He immediately told his supervisor, Michael Hocks, who began examining the computer. They then found 14 pornographic digital movie clips, along with approximately 15 CDs of music (by artists such as Christina Aguilera, Britney Spears, and Eminem).<sup>[14]</sup> Because of the presence of the freeware (which is targeted to teenagers and young adults) and the type of music found on the hard drive, Hocks assumed that Lari's son had downloaded the pornography as well.<sup>[15]</sup>

14. Hocks informed his supervisor about the contents of the hard drive, as well as his belief that Lari's son may have been responsible for it. He memorialized his conversation in a memorandum dated June 19, 2003.<sup>[16]</sup> The supervisor, Mary Welfling, similarly advised her boss, who in turn requested an investigation by the Office of Human Resources, that someone other than Lari may have been responsible for the material found on the computers.<sup>[17]</sup>

15. On June 20, 2002, the Office of Human Resources assigned J. P. Auer to investigate the matter. Auer asked Hocks to bring the Sony to his office and show him where the materials were located. Auer reviewed the materials carefully on June 20-21, 2003. Although most of the photographs were of adult women, Auer found two sets of photos (19 or 20 in all) of two female subjects that Auer believed looked somewhat less than 18 years of age. He showed the photos to co-workers to verify his belief that they looked to be about 15 years old. After Auer completed his review, he returned the Sony to Hocks and asked him to copy the pornographic materials onto compact disks. He also asked Hocks to print some of the photographs. Hocks did as Auer requested and thereafter kept the computer in his office.<sup>[18]</sup>

16. Hocks was able to determine that the digital movies were last modified between June 8 and June 14, 2002. He did not know whether this also meant the materials were downloaded on these dates.<sup>[19]</sup> Approximately ten of the movie clips were in fact downloaded on June 14 between 12:20 a.m. and 8:50 a.m.<sup>[20]</sup>

17. Adeel Lari was on vacation the work week of June 24-28, 2002. On June 25, 2002, Auer searched Lari's office and office desktop computer. Auer found no pornographic materials in the office or on the computer. He also checked Lari's e-mail and Internet usage records and found no "suspect material."<sup>[21]</sup> On June 27, 2002, Auer sent Lari a memorandum informing him of a pending investigation and setting up a meeting with Lari for the afternoon of July 1, the day Lari was to return from his vacation.<sup>[22]</sup>

18. On June 27, 2003, Auer also spoke to an employee in IRM named Linda Dahlin. She came into his office and said something to the effect of "I understand they're not going to do anything about this." Auer told her to "wait and see what happens."<sup>[23]</sup>

19. On July 1, 2003, Lari returned from his vacation. On his voice mail was a message from a reporter seeking to discuss the investigation. Believing the reporter was looking for information about a project Lari had worked on in the past, Lari returned the call and was shocked to hear that the reporter wanted to discuss the discovery of pornographic material on Lari's laptop computer. Lari then looked through his mail and found the memorandum from Auer about the investigation and the meeting scheduled for later that day.

20. Auer interviewed Lari that afternoon. Lari denied any knowledge of how the material got there and denied ever using the Internet to access any pornographic websites. When asked to speculate as to how the material got there, Lari said that it was possible that someone had used a file-sharing technique called a "Trojan Horse" to deposit the material in the computer without his knowledge. Because he has a DSL Internet connection at home (meaning the computer is typically left on while connected to the DSL line), Lari believed this could have been done. The other possibility Lari identified was his 15-year-old son. Lari informed Auer that high school had ended for the summer on June 7 or 8 and that his son had been home alone for the following two weeks. He also said that he had left the Sony at home for several weeks after a trip to New York in May.<sup>[24]</sup>

21. Auer showed Lari some of the pornographic photos and suggested that perhaps the female in the picture was Lari's son's girlfriend, which Lari denied. Auer also suggested that the photographs might have been taken in Lari's home, which Lari denied. At the end of the interview, Auer stated that it occurred to him that maybe Lari's son was involved, and he said he would "probably" like to speak with him if Lari would consent. Lari responded that normally it would be no problem, but that he would not agree to let his son's privacy be violated given that someone in the Department had already provided information to the media. In the course of the interview, Lari volunteered that he had a second laptop (the Compaq) that was also being repaired.<sup>[25]</sup>

22. After the interview Auer contacted Hocks about the Compaq computer. Hocks found it, examined it, and determined that the hard drive contained two short digital pornographic movies in a folder entitled "D:\Document and Settings\Lari\My Document\Download\zier04 folder."<sup>[26]</sup> He was able to determine that these materials had last been modified between 1:30 a.m. and 2:00 a.m. on May 5, 2002.<sup>[27]</sup>

23. Auer interviewed Lari again on July 10, 2002. In this interview Auer questioned Lari about his use of the Compaq and the Sony and where he used them when the computers were at his home. Lari explained that when he brought the computers home, they stayed in his home office. He also explained that he has two desktop computers in public areas of his home, one in the living room and one in the family room, so that he could monitor his children's use of them. Auer also asked about Lari's whereabouts from 1:30 to 2:00 a.m. on May 5, 2002. Auer knew from checking Lari's Groupwise calendar that Lari was at the DFL convention that weekend, and he knew that Lari had sent an e-mail message from home at 8:11 a.m. on Sunday

morning.<sup>[28]</sup> Lari explained that the convention had ended relatively early on Saturday night and that he went home and went to bed. Auer again asked Lari if he recognized any women in the photographs or if the photographs were taken in his home, which Lari again denied. Auer provided no additional information to Lari about dates and times when the materials were accessed or downloaded, and he asked no questions about Lari's activities on June 14, the date on which ten of the movies were downloaded.<sup>[29]</sup>

24. On July 11, 2002, Auer brought the Compaq and the Sony to Special Agent Don Cheung of the Bureau of Criminal Apprehension (BCA). Cheung prepared a search warrant affidavit for both computers, alleging that both computers contained possible evidence of possession of child pornography.<sup>[30]</sup> The search warrant affidavit and the warrant issued based on the affidavit are public documents.

25. Lari's boss, Chief of Staff Margo LaBau, reviewed a copy of Auer's draft report. She met with Lari and showed him only the final page or two of the report, which focused on the policies Auer believed were violated. She told Lari that the report was in draft form and asked whether Lari had any other information that should be considered before she made a final decision. In response to her questions, Lari gave her information about how and why he had purchased the Sony.<sup>[31]</sup>

26. Auer completed his investigation report on July 30, 2002. In his report, Auer concluded that (1) the material was not downloaded through use of a Trojan Horse or any cause outside of Lari's control; (2) Lari's admission that he had allowed his son to download music from the Internet was "at least a technical violation" of Department policy; (3) the evidence supported the conclusion that Lari, not his son, had placed the pornographic material on the computers; and (4) the evidence supported the conclusion that Lari violated several Department policies, including the Code of Ethics, the Sexual Harassment policy, and the Telecommunications policy.<sup>[32]</sup> In the course of his analysis, Auer made a number of findings in support of his belief that Lari had followed improper procedures in purchasing the computer and had both purchased and used it solely for personal, as opposed to work-related, purposes.<sup>[33]</sup>

27. After receiving Auer's final investigation report, LaBau contacted Auer and told him she wanted him to interview Jim Aamot, the IT specialist in ORS who had consulted with Lari and arranged for the purchase of the Sony. Auer interviewed Aamot on August 14, 2002. After the interview Auer informed LaBau that Auer had added no new information.

28. After receiving word from Auer that Aamot's interview yielded no new information, LaBau spoke again to Lari and told him the substance of the report would not be changed. Although she encouraged Lari to provide corroborating information if he was not responsible for the presence of the material, she told him that no matter who did it, the material was on Lari's computer and that he was ultimately responsible for ensuring that the computer was not used that way. She told him she saw little chance there would be no discipline.<sup>[34]</sup>

29. LaBau did not believe that Auer had substantiated that Lari was responsible for putting the pornography on the laptops or that Lari necessarily even knew the material was there.<sup>[35]</sup> She requested information from Human Resources on other disciplines imposed for misuse of state-owned equipment and found no situations that she believed were comparable. In general, the discipline records show that the Department routinely disciplines employees with reprimands or suspensions for e-mailing or storing sexually explicit materials in their offices during working hours.<sup>[36]</sup> In the one situation involving three management-level employees who resigned in lieu of termination, those employees had admitted to exchanging pornographic material on their office computers and displaying it on monitors in their offices, where it was seen by other employees.<sup>[37]</sup> There are no records indicating that the Department has ever disciplined an employee for permitting a family member to use a state-owned computer.

30. Based on Auer's report, management personnel in the Human Resources Department strongly believed that termination was the appropriate discipline, as did Doug Weiszhaar, the Deputy Commissioner.<sup>[38]</sup> Weiszhaar believed that the circumstances had to be dealt with "strongly" because Lari was in a highly visible position.<sup>[39]</sup> LaBau was under considerable pressure to terminate Lari.

31. Because she believed there was "no way of proving" who was responsible for the material, and in light of the substantial contributions Lari had made to the agency over the course of his career, LaBau decided that demotion out of management was more appropriate discipline than discharge. She notified Human Resources of her decision, asked them to prepare the formal notice to Lari, and asked them to find a new position that would utilize his skills.<sup>[40]</sup> Weiszhaar did not agree with this decision. He ultimately expressed support for it, "but not strongly."<sup>[41]</sup>

## The Discipline Letter

32. On September 19, 2002, LaBau met with Lari and provided him with a letter notifying him that he was demoted effective the next day. During the meeting, Lari told LaBau that his son was responsible for putting the material on the computers. She declined the opportunity to talk to his son, responding "whether or not you did it is not what this discipline is about."

33. Nonetheless, the letter reads in relevant part as follows:

**The reason for this demotion is because an internal investigation substantiated that you engaged in serious misconduct.** Specifically you violated Mn/DOT's Code of Ethics policy and Mn/DOT's Sexual Harassment Policy by being responsible for the security of two Mn/DOT laptop computers that were found to have substantial amounts of pornographic and/or sexually explicit material stored on them. **The investigative evidence (summarized below) leads to the conclusion that it is more likely than not that you placed this material on these computers[.]**<sup>[42]</sup>



In the letter, LaBau specifically rejected the possibility that someone other than Lari was responsible for placing the material on the computers, on the basis that both computers required a password before they could be used, and because she found it unlikely that Lari would give anyone the password to two laptops.<sup>[43]</sup>

34. The evidence cited in the letter as the basis for these conclusions is taken from Auer's investigative report. Much of it is factually inaccurate, even though accurate information was available in the investigation file in the form of taped interviews and memoranda from persons with knowledge.

35. For example, the discipline letter cites the following as evidence supporting the conclusion that Lari placed the material on the computers:

You had two Mn/DOT assigned laptop computers: a Sony and a Dell. The Sony contained unauthorized software. Two of the unauthorized programs are specifically intended for downloading films. The Sony was also equipped with a DVD player and CD copying or "burning" capabilities. You had no practical Mn/DOT business reason for having these programs on your computer. In fact you had no business need to purchase the Sony in the first place because you had the Dell laptop and never relinquished it even after getting the Sony. You purchased the Sony computer using funds from your former office and the purchase order was dated 6/13/01. The IRM Desktop Support services section had no involvement or consultation in this purchase. In general, with few exceptions, Mn/DOT computers are purchased through IRM and only authorized programs are permitted on them.<sup>[44]</sup>

36. In fact, Lari's second computer was an unreliable Compaq that was at the end of its useful life, not a Dell. The Department has since stipulated that the Compaq was outdated and had significant reliability problems. The screen would freeze up without notice and Lari's work required a reliable laptop computer. In addition, the Department has stipulated that these problems with the Compaq prompted Lari to pursue purchase of the Sony as a replacement for the Compaq.

37. Lari had consulted Jim Aamot, an IT specialist in ORS, concerning the purchase of a laptop to replace the Compaq. Aamot was well aware of the reliability problems associated with the Compaq. In addition, the Compaq had been sold with a peripheral DVD drive that was not compatible with the operating system installed on the computer. It had never functioned at all. Aamot consulted with other technicians in the Transportation Research and Investment Management (TRIM) Bureau, who advised him to purchase a Toshiba with a combination DVD and CD R/W drive.<sup>[45]</sup> Lari did not specifically request this feature; it was something that Aamot was looking at because he knew of the technology and thought it would be useful to the office. He recommended this feature to Lari not knowing or particularly caring whether Lari would use it, but because at any given time someone else within the office might need to use it. Aamot



did some research and found that this feature was available in laptops made by Sony and Toshiba. He obtained two bids from vendors and presented the information to Lari, who chose the Sony because it cost less than the Toshiba and because the Toshiba had another feature (wireless networking) that was not needed.<sup>[46]</sup>

38. In addition, Aamot was responsible for loading the office software onto the Sony. He did not install networking software onto the Sony because it was going to be shared by other users, and it was easier to share if there was no network password installed. Aamot recalls that Lari had no preference as to whether the networking software should be installed or not and simply went along with Aamot's recommendation. In addition, Aamot believed that it was much easier and faster to access the Department's network from a remote location by using the Internet as opposed to direct access through networking software.<sup>[47]</sup>

39. Although Lari, Aamot, and possibly Hocks had advised Auer that the Sony did not have a password,<sup>[48]</sup> and although Auer himself acknowledged that the Sony did not have a password during his interview with Lari,<sup>[49]</sup> Auer incorrectly stated in his report that the Sony was protected by a password.<sup>[50]</sup> He found it unlikely, as did Margo LaBau in the discipline letter quoted above, that anyone other than Lari could have accessed two computers, both of which were protected by a password.

40. With regard to procedures for purchasing computers, when the Sony was purchased in June 2001, there were no procedures in place for either centralizing or standardizing computer purchases within the Department. Each office was responsible for selecting and purchasing whatever equipment was deemed necessary. Beginning in the summer of 2001, a Purchasing Advisory Group composed of experienced IT personnel was assembled to develop a list of "preferred hardware." The group's goal was to standardize, as opposed to centralize, the types of equipment purchased so that it would be easier for DSS to provide services through the use of uniform service-level agreements.<sup>[51]</sup>

41. The Advisory Group's recommendations were finalized in early 2002, and it now publishes its recommendations on a website with information about pricing. All of the desktop computers recommended by the advisory group have DVD and CD R/W drives on them, as does one of the recommended laptops.<sup>[52]</sup>

42. In June 2001, there were no service-level agreements in place between DSS and any office within the Department. Today, some offices within the Department have service-level agreements with DSS, while others do not. The ORS is one of the offices that has no service agreement with DSS and has retained its own technicians to support its computers. Even since the formation of the Purchasing Advisory Group, the purchase of computers continues to be the responsibility of each office, which may or may not consult with DSS for information about preferred hardware and may or may go through DSS to purchase equipment.<sup>[53]</sup> This information was conveyed to Auer during the course of his investigation and was included in the investigative file in the form of a memorandum from the manager of DSS.<sup>[54]</sup>

43. Finally, the discipline letter stated that only authorized software programs were permitted on state-owned computers. There is no list of “authorized” software programs. DSS publishes a best practices document that makes recommendations, but it is up to each office within the Department to determine whether other software is appropriate.<sup>[55]</sup> DSS will provide support only for software it installs; if something goes wrong with other types of software, DSS will not attempt to fix it but instead advises the user to remove the problematic software.<sup>[56]</sup>

44. Before the discovery of the pornographic material on his computers, Lari was not aware that his son had installed the Win MX or Morpheus file-sharing software on the Sony, and he was not aware that his son had surreptitiously downloaded pornographic material using the Sony. He had heard of Morpheus, but believed it was a program similar to Napster that allowed the downloading of audio files. Although he had given his son permission to use the Sony to download music when their home computers were being used by other persons, he had never given his son permission to use the Compaq, nor had he given his son the password to the Compaq.<sup>[57]</sup> As of June 18, 2002, the circumstances do not suggest that Lari reasonably should have known of the unauthorized and surreptitious use his son was making of the computer.

45. In addition to the file-sharing software used to download the pornographic material, the other software to which LaBau apparently referred to as being “unauthorized” was some personal finance software and the Nikon software for digital cameras, which Lari had used to store the family photographs described above. Some of this same software had been installed on Lari’s office desktop computer, and IRM personnel transferred it to the computer he uses for his current position without ever suggesting it was not appropriate to have it there.<sup>[58]</sup>

46. Finally, with regard to Lari’s failure to “relinquish” the Compaq, the evidence is uncontroverted that the Compaq had reached the end of its useful life and was not going to be reassigned to another employee but was going to be recycled whenever Lari turned it in.<sup>[59]</sup> Furthermore, the Department has no written policy or procedures in place for recycling old computers, especially for management-level employees who are concerned about being able to retrieve information left on them.<sup>[60]</sup>

## **Events After the Demotion**

47. On September 25, 2002, Lari responded in writing to the discipline letter. He stated that he did not access or store pornographic images on state-owned laptop computers and that he did not knowingly permit another person to do so. He further stated that his efforts to determine who was responsible were hampered by the lack of information provided to him about when the images were accessed and stored.<sup>[61]</sup> Lari reported to work at his new job in the Metro Division. He has installed software on his home computers that allows him to monitor all use of the Internet. He would never bring a state-owned laptop into his home again.<sup>[62]</sup>

48. At some point during the fall of 2002, the BCA presented the 19 to 20 photos of the female who was possibly under age 18 to the Ramsey County Attorney's office for review. The County Attorney's office declined to prosecute because there was insufficient evidence to show that the female in question was under 18.<sup>[63]</sup>

49. Margo LaBau left her position as Chief of Staff at Mn/DOT in early October 2002.

50. Toward the end of October 2002, the Minneapolis newspaper obtained a copy of the investigative report, and articles about Lari's demotion for placing pornography on the computers appeared in both the Minneapolis and St. Paul newspapers. The articles referenced Auer's conclusion that some of the material could violate criminal laws prohibiting possession of child pornography. In response to these articles, George Weiszhaar<sup>[64]</sup> sent an e-mail to all managers within the Department assuring them that appropriate discipline was administered based on the conclusion of the investigation, and that "[w]hile we can't share all the information due to Data Privacy and potential litigation, we took prompt and appropriate action. Issues in this situation that fall outside of Mn/DOT policies are under review by the appropriate law enforcement agencies."<sup>[65]</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge has jurisdiction in this proceeding pursuant to Minn. Stat. § 43A.33.

2. The Notice of Hearing issued by the Office of Administrative Hearings was in all respects proper. All substantive and procedural requirements of law or rule have been fulfilled.

3. The Employee, Adeel Lari, is a permanent employee in the classified service of the State of Minnesota within the meaning of Minn. Stat. § 43A.33.

4. The Employee cannot be demoted except for just cause.<sup>[66]</sup> Just cause includes, but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner.<sup>[67]</sup> In this case the Department alleges that the employee's demotion is justified by his serious violation of written policies and procedures, specifically the Department's Sexual Harassment Policy and Code of Ethics/Telecommunications Policies.

5. The Department has the burden of establishing by a preponderance of the evidence that the Employee's demotion was for just cause.<sup>[68]</sup>

6. If the administrative law judge finds, based on the hearing record, that the action appealed was not taken by the appointing authority for just cause, the employee shall be reinstated to the position, or an equal position in another division within the same agency, without loss of pay. If the administrative law judge finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record establishes extenuating circumstances, the administrative law judge may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action.<sup>[69]</sup>

7. The Department's sexual harassment policy prohibits unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that has the purpose or effect of substantially interfering with an individual's employment or creates an intimidating, hostile, or offensive environment.<sup>[70]</sup>

8. Adeel Lari did not engage in any verbal or physical conduct of a sexual nature in violation of the Department's sexual harassment policy.

9. The Department's Code of Ethics policy precludes, among other things, personal use of state assets.<sup>[71]</sup> The Code of Ethics references the Department's Telecommunication Policy for a description of the permissible personal use that employees may make of state telecommunication equipment.<sup>[72]</sup> The Telecommunication Policy permits a state employee to use state equipment to communicate electronically provided such use (1) results in no additional charge to the Department or a charge so small as to make accounting for it unreasonable or administratively impracticable; (2) is limited and reasonable; (3) is during non-working hours or results in very limited state work time lost; (4) does not adversely affect employee performance or the performance of other employees; and (5) can withstand public scrutiny without embarrassment to the Department.<sup>[73]</sup>

10. Adeel Lari's did not knowingly permit his son to access or store pornographic material in violation of these policies.

11. A Policy Guideline concerning the Telecommunication Policy issued by the Department requires employees to refrain from allowing any non-state employees to use Department telecommunication equipment.

12. Adeel Lari's conduct in knowingly allowing his son to download music using the Sony did violate the Telecommunication Policy Guideline, but this is not a serious violation of a written policy that was applied in a uniform or nondiscriminatory manner.

13. The Department has failed to prove that the Employee was demoted for just cause, and the employee is entitled to be reinstated to his position as Director of the Office of Research Services, or to an equal position in another division within the agency, with full back pay.

14. Any Findings of Fact that are more properly considered Conclusions should be so considered, and vice versa. The attached Memorandum is incorporated herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **ORDER**

IT IS ORDERED that the decision of the Department of Transportation is hereby REVERSED and Adeel Lari's appeal is hereby GRANTED.

Dated this 21st day of February, 2003.

/s/ Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Tape recorded

### **MEMORANDUM**

The Department is in the difficult position of attempting to justify Lari's demotion for reasons that are almost entirely different than those contained in the written letter of discipline. Having stipulated that Lari did not place the pornographic material on the computers and that his work required a reliable laptop computer to replace the Compaq, the Department has advanced alternative theories of why the demotion is nonetheless justified.

The first alternative theory, based on LaBau's testimony, is that it does not matter whether Lari placed the materials on his computer or even knew about the pornography, because it was his responsibility to safeguard the use of the computers. The Department in its closing brief does not contend that Lari knew or should have known about the material on his laptop. It advocates essentially a strict liability theory for all use, authorized or not, made of the computers. Under this view, the demotion is justified based solely on the fact that pornographic material was found on his computers, without any need to scrutinize the knowledge of or the conduct of the employee.

Contrary to the Department's position, it does matter whether Lari placed the materials on his computer, and it does matter whether Lari knew the material was there, because the Department's written policies, upon which any discipline must be based, prohibit intentionally improper conduct by employees. Whether there is just cause for Lari's demotion must be determined by examining his knowledge and his conduct in light of the Department's written policies.

The statewide policy on Electronic Communication and Technology Ethics<sup>[74]</sup> is based on the code of ethics for employees in the executive branch, Minn. Stat. § 43A.38. Subdivision 4(a) of the statutory code of ethics provides generally that an employee shall not allow the use of state equipment for the employee's private interest or any other use not in the interest of the state, except as provided by law. Subdivision 4(b) provides that an employee may use state time, property or equipment to communicate electronically with other persons provided this use results in no incremental cost to the state or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impracticable. Subdivision (c) of the statute requires the commissioners of administration and employee relations to issue statewide policies on the use of electronic mail and other forms of electronic communications that "shall permit state employees to make reasonable use of state time, property, and equipment for personal communications" and shall address issues of privacy, content, and the definition of reasonable use.

Noncompliance with this statute is addressed in Minn. Stat. § 43A.39, subd. 2:

Any employee who **intentionally** fails to comply with the provisions of Chapter 43A shall be subject to disciplinary action and action pursuant to Chapter 609 [the criminal code].

(emphasis added). The statutory code of ethics plainly contains an intent requirement.

The statewide policy on ethics issued by the commissioners of administration and employee relations pursuant to Chapter 43A provides in relevant part as follows:

Serious or egregious misuse [of state-owned computers] including, but not limited to, accessing, creating, storing, and/or transmitting of offensive, racist, sexist, hate based, obscene, or adult oriented information/material or other potentially illegal activities could result in immediate discharge.<sup>[75]</sup>

This policy defines misuse of state equipment by prohibiting certain conduct by employees: accessing, creating, storing, or transmitting offensive materials. There is no suggestion in this policy that employees are to be strictly liable for the unauthorized actions of others.

The Mn/DOT Code of Ethics Policy requires employees to follow the Code of Ethics (chapter 43A) and related state statutes including, among others, conflicts of interest and personal use of state assets.<sup>[76]</sup> Employees who "knowingly" fail to disclose or correct a situation that is a conflict of interest (defined to include use of the employee's position to secure advantages different from those available to the general public) are subject to disciplinary action. It further provides "This policy is consistent in all respects with Minn. Stat. Sections 43A.38 and 39 and any other statutes, laws, rules or regulations that govern employee conduct."<sup>[77]</sup> The Mn/DOT Code of Ethics guidelines require employees to avoid any action that might result in or create the

appearance of a conflict of interest, including misuse of state resources for non-Mn/DOT sanctioned purposes or personal gain. It expressly references the Mn/DOT Telecommunication Policy for definition of personal allowable use of state equipment for electronic communications.

The Mn/DOT Telecommunication Policy, similarly based on 43A.38 and .39, provides that an employee may use state time, property, or equipment to communicate electronically for personal reasons provided such use:

- 1) Results in no additional charge to Mn/DOT or a charge so small as to make accounting for it unreasonable or administratively impracticable,
- 2) Is limited and reasonable,
- 3) Is during non-working hours or results in very limited state work time lost,
- 4) Does not adversely affect employee performance or the performance of other employees,
- 5) Can withstand public scrutiny without embarrassment to Mn/DOT.<sup>[78]</sup>

It further provides that failure to follow this policy will subject employees to disciplinary action. The Mn/DOT Policy Guideline on the Telecommunications Policy requires that employees refrain from making any use of Mn/DOT telecommunication equipment for the “receipt, storage or transmission of offensive, racist, sexist, obscene or pornographic information,” and it requires employees to refrain from allowing “any non-state employees to use Mn/DOT telecommunication equipment/services.”<sup>[79]</sup>

Finally, the Mn/DOT Sexual Harassment Policy and Policy Guideline define harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature.<sup>[80]</sup> Again, it is the employee’s conduct, not anyone else’s conduct, that provides the basis for any discipline. There is no strict liability for sexual harassment in Minnesota, even for acts of harassment perpetrated by a supervisor.<sup>[81]</sup>

Chapter 43A and all of the written policies upon which the Department relies require either knowing or intentional violations as a basis for discipline. The record further suggests that the Department was aware of this requirement at the time it disciplined Lari. Margo LaBau’s testimony during the hearing contrasts sharply with the statements she made in the discipline letter. When asked why her discipline letter contained the statement that Lari “more likely than not” was responsible for the pornography, as opposed to saying that it could not be substantiated whether he did it or not, LaBau responded “I don’t know that I really have an answer to that.” The Administrative Law Judge has concluded that LaBau, or whoever drafted the letter for her, may have doubted the Department’s ability to prove that Lari was responsible, but believed the Department had to say he was responsible in order to justify the decision to demote him.

Again, the Department does not contend now that Lari knew, or even should have known, about the misuse his son was making of the computers. The evidence is very



clear that Lari did not know, and under the circumstances his lack of knowledge is not unreasonable. The fair inference from the evidence is that the huge amount of downloading done on June 14 was responsible for the failure of the operating system, the problem for which Lari contacted DSS on June 17. The pornographic material was essentially hidden in folders referencing music or CDs. Much of the downloading activity occurred at odd hours (such as the middle of the night). It did not take long to do; although the total volume of material was large (2.8 gigabytes), it would only have taken an hour to an hour and a half to download all of it using a DSL connection.<sup>[82]</sup> Furthermore, the volume of material was not sufficient to impair the performance of the Sony, which had a 30-gigabyte hard drive.

If Lari had known what his son was doing and had failed to correct the situation, it would be a serious violation of the Ethics and Telecommunications policies to permit such activity to continue, and a demotion or a discharge would have been entirely justified; however, he did not, and there is consequently no basis for the discipline on the theory proposed by the Department.

Another alternative theory not contained in the discipline letter is that Lari violated the Ethics Code and Policy by purchasing and using the Sony purely for personal reasons. LaBau testified that she assumed, based on Auer's report, that Lari had never used the Sony for work-related purposes. Although this theme surfaces in a number of places in Auer's report, there is scant evidence, even in the report itself, to support it. Auer testified that he believed Lari seized the opportunity in June 2001 to use leftover money in the ATF budget "to purchase a nice computer for himself." This conclusion is completely inconsistent with both the statements made by Jim Aamot when Auer interviewed him in August 2002, and with Aamot's testimony during the hearing. It is also inconsistent with the Department's recent stipulation that Lari required a working laptop in order to do his job, as well as being inconsistent with the evidence that Lari's predecessor at ORS required a Toshiba laptop to perform the job, and that the Toshiba was passed on to someone else when Lari's predecessor retired.

In addition, Auer testified more than once that when he searched the contents of the Sony he was not looking for work-related materials or personal records; he testified that he was looking only for files containing pornography. There is a footnote in his report attributing to Michael Hocks the statement that Lari had not apparently ever used the computer for Mn/DOT related work, which both LaBau and Weiszhaar assumed was entirely true.<sup>[83]</sup> Hocks did not testify to anything like this.<sup>[84]</sup>

The fact that Auer reached these conclusions is all the more puzzling, since Lari had provided to him during the investigation a copy of a presentation done in May 2002 for which he had used the Sony laptop.<sup>[85]</sup> The Sony had some personal software on it for finances and family photographs, but this in itself is not prohibited personal use. Lari stated in his interviews and testified credibly in the hearing that he had done a few presentations with the Sony but more typically had the computer at work and would take it home on weekends or when traveling in order to check his calendar and his e-mail.

This use of the computer to do his job while away from the office is not prohibited personal use under any reading of the Code of Ethics.

The record as a whole supports the conclusion that Auer, the Department investigator, immediately and incorrectly concluded that Lari was responsible for the presence of pornography on the computers, and once committed to this view, drew only unfounded and adverse conclusions about Lari's conduct, including his personal use of the Sony. His report clearly influenced LaBau, even though she was less sure of Lari's personal culpability concerning the presence of the pornography. Nonetheless, LaBau adopted Auer's conclusions and used them to justify substantial discipline.

The third alternative theory not contained in the letter of discipline is that in purchasing the Sony with funds from the ATF budget, Lari violated LaBau's directive not to use those funds after January 2001. This is an issue of performance or insubordination, as opposed to a claim that Lari violated one of the Department's written policies. When the hearing started, the Department specifically disclaimed that Lari's performance was at issue, maintaining that he had been a good employee for almost 30 years and that there was no dispute about his work performance or competence on the job.

Even if this issue were relevant to some written departmental policy, the record supports the conclusion that LaBau's recollection of the discussions about the ATF budget is not accurate. LaBau maintains that she gave Lari this clear directive because she had other plans for the funds, but she admitted she had no idea what actually happened to the money in the ATF budget. Lari adamantly disputes that she gave him any such directive, maintaining that he continued to use ATF funds from January through June 2001 for many purposes, including payment of staff salaries and consultant fees. He provided evidence that when ATF and ORS were merged in January 2001, he wrote to LaBau suggesting that the fiscal year 2001 budgets for the two offices remain intact through June 2001 and that he would develop a proposal to consolidate them within six months.<sup>[86]</sup> He testified that her response was that he should develop his proposal as soon as possible. Lari also produced July 2001 correspondence from LaBau concerning his budget proposal for fiscal year 2002, in which she tells him that "ATF dollars were supposed to be split" and utilized for developing a creative financing initiatives unit within the corporate business group, and she asks Lari where he is in his "streamlining analysis."<sup>[87]</sup> The documents support Lari's recollection of the facts, as does Doug Weiszhaar's testimony that LaBau did not discuss this issue with him in seeking his advice about Lari's discipline.

The final alternative theory not contained within the discipline letter that the Department advances to support the demotion is that Lari violated the Guideline to the Telecommunications Policy that requires employees to refrain from allowing persons who are not state employees to use state-owned equipment.<sup>[88]</sup> Although Lari admitted to allowing his son to use the Sony to download music, he was not aware at the time that the Department interpreted this as a violation of the Telecommunications Policy, particularly because the lack of networking software on the Sony precluded any

unauthorized person from obtaining access to the Mn/DOT network. The policy itself does not prohibit use of state equipment by family members; it contains only the frequently-distributed statements<sup>[89]</sup> that an employee may use state equipment for personal reasons provided such use results in no additional charge, is limited and reasonable, is during non-working hours, does not adversely affect employee performance, and can withstand public scrutiny without embarrassment to Mn/DOT. Most of the employees who testified, including Lari, said they were familiar with these statements.

Employees were much less familiar with the Guideline distributed with the policy in 1998, which contains four pages of definitions and criteria for personal use. The very last sentence on the last page contains the statement that employees shall refrain from allowing use of state equipment by “non-state employees.” Michael Hocks, the MIS supervisor who consulted with Auer during the investigation, knew of no written policy concerning use of state-owned computers by family members; and a program manager in ORS testified that it is common knowledge that employees allow family members to use computers, including laptops, to play games on the software that comes loaded onto the computers when they are purchased.

There is no evidence that the Department has ever disciplined any employee for allowing a family member to use a state-owned computer, even though some offices within the Department routinely permitted employees to take home surplus computers for purely personal use, at least through May of 2001.<sup>[90]</sup> Auer himself described such an infraction as a “technical violation” of policy. Although Doug Weiszhaar testified that in his 20 years of government employment he recalled one instance in which an employee had loaned a state-owned computer to a neighbor and had received “severe discipline” as a consequence, Weiszhaar did not join the Department until July 1999, and it appears unlikely that this incident happened during his tenure at Mn/DOT because it is not referenced in the collection of discipline documents produced by the Department.<sup>[91]</sup>

The activity that Lari knowingly permitted, the downloading of music by his son, is a violation of the policy Guideline, but the Administrative Law Judge cannot say that this was a serious violation of a written policy that is enforced in a uniform and nondiscriminatory manner. As a result of the violation, the Department lost the use of a laptop computer. The appropriate discipline would have been to require Lari to replace it or to pay for the cost of repairing it, not to demote him out of the management positions he has held since 1986. Given the public humiliation Lari has endured since the Department’s inaccurate conclusions were publicized, however, no additional punishment could be appropriate.

K.D.S.

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<sup>[1]</sup> Ex. 10.

<sup>[2]</sup> See Notice of Appeal filed October 11, 2002.

[3] Stipulated Facts filed January 16, 2003. The parties also stipulated, as noted below, that the Compaq laptop computer was outdated and had significant reliability problems that prompted Lari to pursue purchase of a replacement laptop computer (the Sony). The parties further stipulated that Lari's work required a reliable laptop computer.

[4] Ex. 30.

[5] Testimony of Gene Ofstead. Mr. Ofstead was a thoughtful, careful, and credible witness.

[6] Testimony of Margo LaBau.

[7] Testimony of Ken Buckeye.

[8] See, e.g., Ex. 34.

[9] Stipulated Facts ¶ 6.

[10] Testimony of Jim Aamot.

[11] See *generally* Testimony of Margo LaBau; Testimony of Adeel Lari; Ex. 27 at 33 (Transcript of Interview of Jim Aamot dated Aug. 14, 2002) (because of budget cutbacks, ORS staff were doing fewer presentations, "less of everything" other than absolute bare necessity monitoring of contracts).

[12] The photographs Lari wanted to save were from a January 2002 trip to Hawaii to visit his father-in-law, who died a few months later, and from a March 2002 trip to Pakistan to visit his niece, who is dying of breast cancer. Testimony of Adeel Lari.

[13] Morpheus is freeware that is similar in function to Win MX. The specific names of the folders containing the pornographic material are as follows: C:\My Music\Me; C:\My Music\Me1; C:\My Music\Me2; D:\Morpheus\Morpheus\MySharefolder; and D:\Morpheus\Morpheus\MySharefolder\Other\Pic. See Ex. 37 at 10.

[14] The digital movie clips were in the following folders: D:\Morpheus\Music; D:\Morpheus\Music\CD-Girls; and D:\Morpheus\Music\Full CD. See Ex. 37 at 10. The music was in folders entitled D:\Morpheus\Music\Full CD's and other sub-folders in this path specific to the artist's name. See Ex. 38 at Exhibits II and III.

[15] Testimony of Michael Hocks. The location of the pornographic material in folders associated with these music files also supports Hocks' belief that Lari's son was responsible for the presence of the material.

[16] *Id.*; Ex. 7

[17] Ex. 28.

[18] Testimony of J.P. Auer; Ex. 37 at 3-4 (Auer's draft Confidential Investigation Report provided to the BCA).

[19] Ex. 16; Testimony of Michael Hocks.

[20] Ex. 38 at Ex. III, page 1. Forensic examinations performed later determined that the pornographic photographs on the Sony were downloaded over November 21-23, 2001 (Thanksgiving weekend); on January 12 (a Saturday), January 15 (a Tuesday), and April 6, 2002 (a Saturday). Ex. 38. The music was downloaded at various times between March 26 and June 14, 2002. *Id.*

[21] Ex. 9 at 3.

[22] Testimony of Adeel Lari.

[23] Testimony of J.P. Auer. The next day the media began requesting information about the investigation, and Dahlin was later disciplined for providing information in violation of the Data Practices Act.

[24] Ex. 25.

[25] Ex. 25. Neither Auer nor anyone else in the Department ever asked again to speak to Lari's son. When Lari later offered to make his son available for an interview, LaBau declined. See Testimony of Adeel Lari; Testimony of Margo LaBau.

[26] Testimony of M. Hocks; Ex. 37 at 10. Although no one at the Department ever asked Lari about this, "Zier" is the nickname of Lari's son.

[27] Forensic analysis performed later determined that the movies were downloaded at 1:39 a.m. and 2:05 a.m. on Sunday, May 5. Ex. 38 at Ex. IV (last page)

[28] This is the only information Lari was ever given about the times the material was downloaded until he got the investigative file in the course of discovery before the hearing.

[29] Auer had checked Lari's calendar for June 14 and knew that Lari had several work meetings scheduled that day. The Department does not dispute now that Lari was at work on June 14.

[30] Ex. 37 at 15-16.

[31] Testimony of Margo LaBau; Testimony of Adeel Lari.

[32] Ex. 9.

[33] *Id.*; see also Testimony of J.P. Auer.

[34] Testimony of Margo LaBau.

[35] *Id.*; Testimony of Doug Weiszhaar.

[36] Ex. 12.

[37] Testimony of Gene Ofstead; Ex. 14.

[38] Testimony of Margo LaBau; Testimony of Doug Weiszhaar.

[39] Testimony of Doug Weiszhaar.

[40] Testimony of Margo LaBau.

[41] Testimony of Doug Weiszhaar.

[42] Ex. 10 (emphasis added).

[43] *Id.*

[44] Ex. 10.

[45] ORS had previously purchased one of these Toshiba laptops for use by the Local Road Research Board and had found them to be reliable. In addition, Lari's predecessor at ORS, Bob Benke, had a Toshiba laptop that was passed down to the Assistant Director of ORS after Benke retired. Testimony of Jim Aamot.

[46] Ex. 27 at 15-31 (Transcript of Auer interview of Aamot on 8/14/02); Testimony of Jim Aamot. Aamot was a knowledgeable and straightforward witness who did not respond to leading questions by either lawyer involved in this case.

[47] Ex. 27 at 43-49.

[48] Ex. 26 at 4; Ex. 27 at 43; Testimony of Michael Hocks.

[49] Ex. 26 at 7.

[50] Ex. 9 at 11.

[51] Testimony of Mary Welfling.

[52] Ex. 8. Although this exhibit is dated November 1, 2002, there is no evidence that these recommendations are significantly different than those finalized in early 2002.

[53] Testimony of Mary Welfling; Testimony of Michael Hocks; Testimony of Jim Aamot. In addition, Margo LaBau testified that when she purchased a laptop for herself, she did not go through DSS/IRM. Testimony of Margo LaBau.

[54] Ex. 24 at E-113a p. 1 (e-mail from Welfling dated July 17, 2002 advising that there were no guidelines for purchasing computers in June 2001).

[55] Testimony of Mary Welfling.

[56] Testimony of Michael Hocks.

[57] Lari kept a list of passwords associated with various software programs at home next to his computer, and he believes his son guessed the password to the Compaq from information contained on this list.

[58] Testimony of Adeel Lari.

[59] Testimony of Jim Aamot.

[60] *Id.* In fact, an audit report in May 2001 specifically pointed out the lack of any department-wide procedure for ensuring that computers are disposed of in order of obsolescence and for ensuring the accuracy of its fixed asset inventory records. Ex. 15 at 18. Furthermore, Doug Weiszhaar testified that his own laptop computer sat unused in his office for three years (until 2003) after he replaced it with two desktop computers, one for his office in St. Cloud and one for his office in St. Paul. Testimony of Doug Weiszhaar.

[61] Ex. 24 at 22.

[62] Testimony of Adeel Lari.

[63] Ex. 37 at 12..

[64] Weiszhaar had become Acting Commissioner October 4, 2002.

[65] Ex. 24 at 23.

[66] Minn. Stat. § 43A.33, subd. 1.

[67] Minn. Stat. § 43A.33, subd. 2.

[68] Minn. R. 1400.7300, subp. 5.

[69] Minn. Stat. § 43A.33, subd. 4.

[70] Ex. 19.

[71] Ex. 18.

[72] Ex. 18 at 4.

[73] Ex. 17.

<sup>[74]</sup> Ex. 20.

<sup>[75]</sup> Ex. 22.

<sup>[76]</sup> Ex. 18.

<sup>[77]</sup> Ex. 18.

<sup>[78]</sup> Ex. 17.

<sup>[79]</sup> Ex. 17, Policy Guideline at p. 4.

<sup>[80]</sup> Ex. 19.

<sup>[81]</sup> Minn. Stat. § 363.01, subd. 41; *Fore v. Health Dimensions, Inc.*, 509 N.W.2d 557, 559 (Minn. App. 1993).

<sup>[82]</sup> Testimony of Michael Hocks.

<sup>[83]</sup> Ex. 9 at 10 n. 14.

<sup>[84]</sup> Hocks was asked whether in searching the computer he found any Mn/DOT-related programs, software, or materials. He answered that he found the office products (Xcel, Power Point, and Word), but not the networking, Groupwise, or timesheet software that he would expect to see. He also testified that there is no requirement that the networking software be installed.

<sup>[85]</sup> Ex. 24 at 8-9.

<sup>[86]</sup> Ex. 31.

<sup>[87]</sup> Ex. 33.

<sup>[88]</sup> The Telecommunications Policy is not even referenced in the discipline letter.

<sup>[89]</sup> See, e.g., Ex. 21.

<sup>[90]</sup> Ex. 15 at 13-15. No employee was ever disciplined for the improper personal use identified in this audit. See Testimony of Doug Weiszhaar.

<sup>[91]</sup> Ex. 12.